

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-780383 AND ALL  
OTHER SEAMAN'S DOCUMENTS  
Issued to: Alcide SYLVES, Jr.

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1875

Alcide SYLVES, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 10 February 1971, an Examiner of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board SS AMERCLOUD UNDER authority of the document above captioned, on or about 3 November 1969, Appellant, at sea wrongfully possessed narcotic paraphernalia.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of AMERCLOUD and the testimony of several witnesses.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 17 February 1971. Appeal was timely filed. Appeal was perfected on 23 June 1971.

FINDINGS OF FACT

On 3 November 1969, Appellant was serving as a messman on board SS AMERCLOUD and acting under authority of his document while the ship was at sea. In view of the deposition to be made of this case no further findings of fact are required.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Because of the disposition to be made of this case, the bases of appeal need not be spelled out.

APPEARANCE: John P. Dowling, Esq., New Orleans, La.

#### OPINION

##### I

Three persons were tried in joinder in the instant case although the specifications lodged against Appellant do not allege any conspiracy, combination, collaboration, or mutually related action on the part of Appellant with respect to any action of any other person charged. I do not imply that such a procedure was necessarily improper, most especially if the persons charged consent to such a procedure. The record with respect to each must show, however, that adequate attention was given to the case of each person individually.

The Examiner's opinion speaks of "the testimony of [Appellant]" D-4. It states that "Mr. Hart and [Appellant] decided to testify and, not having counsel, they were sworn and permitted to testify." D-2.

The record clearly reflects that "Mr. Hart" elected to testify, was sworn, and did testify. The record just as clearly reflects that Appellant did not elect to testify and was not sworn as a witness.

I do not say that under proper consideration the findings of the Examiner could not have been upheld in Appellant's case. I do think that the Examiner's decision shows that Appellant's case did not receive the individual attention it deserved.

##### II

Normally a remand would be appropriate for correction of such an error. I do not find remand appropriate here.

For the first reason, a remand would necessarily have to call for a hearing de novo to be certain that matters involving only one of the other persons charged did not by osmosis seep into the case of Appellant. Since the Examiner dismissed four out of five specifications dealing with narcotics originally preferred against Appellant, only one specification would remain to be considered. Resubmission of this one specification would call for extensive briefing before the Examiner or extensive examination by me on a subsequent appeal. Since the alleged offense was said to have

occurred over two years ago on 3 November 1969, since the hearing was held on 20 January 1970, and since no decision emanated from the Examiner until February 1971, I cannot see that the further delay which would be occasioned by a remand can result in a useful and effective promotion of the purposes of R.S. 4450 and 46 CFR 137.

#### CONCLUSION

I concluded that the order in the instant case should be overruled, that the proceedings as to Appellant should be set aside, and that the charges should be dismissed.

#### OPINION

The order of the Examiner dated at San Francisco, California, on 10 February 1971, is VACATED. The charges are DISMISSED.

C. R. Bender  
Admiral, U.S. Coast Guard  
Commandant

Signed at Washington, D.C., this 20th day of April 1972.

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### Hearings

Joint hearing

### Remand

Not directed when further proceedings would serve no further purpose